



Department of Development Services
205 Lawrence Street
Marietta, Georgia 30060
Brian Binzer, Director

STAFF REVIEW AND RECOMMENDATION

Variance Case #: V2011-36

Legistar #: 20111018

Board of Zoning Appeals Hearing: Monday, November 28, 2011 – 6:00 p.m.

Property Owner: Daniel and Jacqueline Ashworth
328 Freyer Drive, N. E.
Marietta, GA 30060

Applicant: same as above

Address: 328 Freyer Drive, N. E.

Land Lot: 10890 District: 16 Parcel: 0030

Council Ward: 5 Existing Zoning: R-3 (Single Family Residential 3 units/acre)

Special Exception / Special Use / Variance(s) Requested:

1. Variance to increase the maximum height of a fence within a yard fronting a public street from 4' to 6'. [Section 710.04 (A)(1)]
2. Variance to reduce the required setback for a fence from 2' to 0'. [Section 710.04 (A)(1)]

Statement of Fact

As per section 720.03 of the Comprehensive Development Code of Marietta, the Board of Zoning Appeals may alter or modify the application of any such provision in the Development Code because of unnecessary hardship if doing so shall be in accordance with the general purpose and intent of these regulations, or amendments thereto, and only in the event the board determines that by such alteration or modification unnecessary hardship may be avoided and the public health, safety, morals and general welfare is properly secured and protected. In granting any variance the board of zoning appeals shall designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of these regulations and may designate conditions to be performed or met by the user or property owner, out of regard for the public health, safety, comfort, convenience, and general welfare of the community, including safeguards for, with respect to light, air, areas of occupancy, density of population and conformity to any master plan guiding the future development of the city. The development costs of the applicant as they pertain to the strict compliance with a regulation may not be the primary reason for granting a variance.

Criteria:

1. Exceptional or extraordinary circumstances or conditions *are/are not* applicable to the development of the site that do not apply generally to sites in the same zoning district.

2. Granting the application *is/is not* necessary for the preservation and enjoyment of a substantial property right of the applicant, and to prevent unreasonable property loss or unnecessary hardship.
3. Granting the application *will/will not* be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety, or general welfare.

PICTURES



328 Freyer Drive (from Freyer Street frontage)



Subject fence along Pine Street



Fence on adjacent school property

Recommended Action:

Approval. The applicants, Daniel and Jacqueline Ashworth, are requesting variances for a fence located on their property at 328 Freyer Drive. The subject property is zoned R-3 (Single Family Residential – 3 units / acre) and contains road frontage along both Freyer Drive and Pine Street. The primary access to the home is from Freyer Drive. The applicants recently replaced a 5' chain link fence with a 6' tall wooden fence along the rear frontage along Pine Street.

In residentially zoned districts the ordinance only allows four foot (4') tall fences made of decorative material (wood, brick, stone, or wrought iron) in any yard fronting a street. The required setback for a fence is two feet from the right of way line. The applicants' fence is a wooden privacy fence that meets the requirement for material but does not meet the criteria for height and setback.

The applicant wishes to keep the height of the fence for safety reasons, having recently been the victim of a burglary where the perpetrator likely gained access to the property from Pine Street because the fence was not tall enough. Also, the adjacent property to the east has recently constructed a new, eight foot chain-link fence. This fence is located on the Allgood Elementary School property and is owned by the Marietta Board of Education, which is typically exempt from the Zoning Ordinance. The fence was constructed on the subject property to match the setback of the fence on the school property. Allowing the fence to remain in place at the existing height should not affect any of the surrounding properties. Additionally, exceptional circumstances apply to this property, as it is one of the few double-frontage lots in the area.

Earlier this year the Board of Zoning Appeals approved multiple height variances for fences:

- ***V2011-07: 651 St. Anne's Road*** ***March 28, 2011***
 - (1) Variance to allow an 8 ft tall wooden fence along the side yard fronting a public/private street; and
 - (2) Variance to allow a wooden fence to be within 2 feet of the public right-of-way.
- ***V2011-06: 840 N. St. Mary's Ln & 697 Kennesaw Ave*** ***March 28, 2011***
 - (1) Variance to increase the maximum height of a fence within a yard fronting a public street from 4 ft. to 6 ft. and;
 - (2) Variance to increase the maximum height of a fence within a side yard between the street and the front edge of the house from 4 ft. to 6 ft.
- ***V2011-08: 213 Maxwell Avenue*** ***April 25, 2011***
 - (1) Variance to allow an 8' tall wooden fence along the yard fronting a public/private street;
 - (2) Variance to allow an 8 ft. tall wooden fence along the side yard fronting a public/private street; and
 - (3) Variance to allow a wooden fence to be within 2 feet of the public right of way

Although these previously approved cases applied to fences in the side yard of a corner property, this case is similar in that the request is for the height and placement of a fence along a secondary frontage (Pine Street).

Staff recommends approval of this variance request.